

Internal Revenue bulletin

Bulletin No. 2000-2
January 10, 2000

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2000-1, page 250.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for January 2000.

T.D. 8849, page 245.

Final regulations under section 663(c) of the Code relate to the separate share rules applicable to estates.

T.D. 8850, page 265.

Final regulations under section 6038 of the Code relate to the reporting requirements of U.S. persons owning interests in controlled foreign partnerships or corporations. Also, certain amendments to the final regulations under section 6038B govern reporting of transfers to foreign partnerships and corporations.

T.D. 8851, page 275.

Final regulations under section 6046A of the Code relate to the reporting requirements of U.S. persons that acquire or dispose of an interest in a foreign partnership, or whose proportional interest in a foreign partnership changes.

T.D. 8852, page 253.

Final regulations under sections 1366, 1367, and 1368 of the Code relate to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

REG-106012-98, page 290.

Proposed regulations under section 118 of the Code relate to the exclusion from gross income for a contribution in aid of construction (CIAC) from any person (whether or not a shareholder) to a required public utility that provides water or sewerage disposal services. The

regulations define what constitutes a CIAC and provides rules for adjusting the basis of water or sewerage disposal facilities acquired as, or acquired or constructed with any money received as, a CIAC. The regulations also provide the time and manner for taxpayers to notify the Secretary of amounts treated as a contribution to capital under this provision. A public hearing is scheduled for April 27, 2000.

Rev. Proc. 2000-10, page 287.

Qualified Zone Academy Bond limitations for 2000.

This procedure sets forth the maximum face amount of Qualified Zone Academy Bonds that may be issued for each state in 2000. For this purpose, "state" includes the District of Columbia and U.S. possessions.

Notice 2000-1, page 288.

Effective date of proposed regulations under section 1.368-2(d)(4). Proposed regulations relating to the solely for voting stock requirement in reorganizations under section 368(a)(1)(C) of the Code, when finalized, will be modified to generally apply to transactions occurring after December 31, 1999. But in certain cases, taxpayers will be able to request a private letter ruling permitting them to apply the proposed regulations to transactions occurring before the proposed effective date.

EMPLOYEE PLANS

Announcement 2000-1, page 294.

This document provides interim information about the reporting requirements applicable to certain plans of state and local government employers for amounts provided under section 457. Comments are also requested regarding types of plans that should be treated as bona fide severance plans for purposes of section 457.

(Continued on the page following the Introduction)

Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities

and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

ESTATE TAX

Announcement 2000-3, page 296.

This document contains corrections to T.D. 8846, 1999-51 I.R.B. 679, relating to the effect of certain administration expenses on the valuation of property for marital and charitable deduction purposes.

ADMINISTRATIVE

Rev. Proc. 2000-9, page 280.

Per diem allowances. This procedure provides optional rules for substantiating the amount of certain reimbursed

travel expenses of an employee and for determining the amount of deductible meals while traveling away from home. Rev. Proc. 98-64 superseded.

Announcement 2000-2, page 295.

Information letters written by the national office of Chief Counsel and by the Office of the Commissioner, Tax Exempt and Government Entities Division, to the public in response to inquiries postmarked or, if not mailed, received after January 1, 2000, will be available for public inspection quarterly beginning March 31, 2000, and on a continuing quarterly basis.

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here

1999 for the purpose of constructing a water facility. To the extent that the \$1,000,000 exceeded the actual cost of the facility, the contribution was subject to being returned. In 2000, M built the facility at a cost of \$700,000 and returned \$200,000 to the contributor. As of the end of 2001, M had not returned the remaining \$100,000. Assuming accurate records are kept, the requirement under section 118(c)(2) is satisfied for \$700,000 of the contribution. Because \$200,000 of the contribution was returned within the time period during which qualifying expenditures could be made, this amount is not includible in M's income. However, the remaining \$100,000 is includible in M's income for its 1999 taxable year (the taxable year in which the amount was received) because the amount was neither spent nor repaid during the prescribed time period. To the extent M repays the remaining \$100,000 after year 2001, M would be entitled to a deduction in the year such repayment is paid or incurred.

(d) *Adjusted basis*—(1) *Exclusion from basis*. Except for a repayment described in paragraph (d)(2) of this section, to the extent that a water or sewerage disposal facility is acquired or constructed with an amount received as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the facility is reduced by the amount of the contribution. To the extent the water or sewerage disposal facility is acquired as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the contributed facility is zero.

(2) *Repayment of contribution*. If a contribution to the capital of the taxpayer under paragraph (a) of this section is repaid to the contributor, either in whole or in part, then the repayment amount is a capital expenditure in the taxable year in which it is paid or incurred, resulting in an increase in the property's adjusted basis in such year.

(3) *Allocation of contributions*. An amount treated as a capital expenditure under this paragraph (d) is to be allocated proportionately to the adjusted basis of each property acquired or constructed with the contribution based on the relative cost of such property.

(4) *Example*. The application of this paragraph (d) is illustrated by the following example:

Example. A, a calendar year regulated public utility that provides water services, received a \$1,000,000 contribution in aid of construction in 1999 as an advance from B, a developer, for the purpose of constructing a water facility. To the extent

that the \$1,000,000 exceeds the actual cost of the facility, the contribution is subject to being returned. Under the terms of the advance, A agrees to pay to B a percentage of the receipts from the facility over a fixed period, but limited to the cost of the facility. In 2000, A builds the facility at a cost of \$700,000 and returns \$300,000 to B. In 2001, A pays \$20,000 to B out of the receipts from the facility. Assuming accurate records are kept, the \$700,000 advance is a contribution to the capital of A under paragraph (a) of this section and is excludable from A's income. The basis of the \$700,000 facility constructed with this contribution to capital is zero. The \$300,000 excess amount is not a contribution to the capital of A under paragraph (a) of this section because it does not meet the expenditure rule described in paragraph (c)(1) of this section. However, this excess amount is not includible in A's income pursuant to paragraph (c)(2)(ii) of this section since the amount is repaid to B within the required time period. The repayment of the \$300,000 excess amount to B in 2000 is not treated as a capital expenditure by A. The \$20,000 payment to B in 2001 is treated as a capital expenditure by A in 2001 resulting in an increase in the adjusted basis of the water facility from zero to \$20,000.

(e) *Statute of limitations*—(1) *Extension of statute of limitations*. Under section 118(d)(1), the statutory period for assessment of any deficiency attributable to a contribution to capital under paragraph (a) of this section does not expire before the expiration of 3 years after the date the taxpayer notifies the Secretary in the time and manner prescribed in paragraph (e)(2) of this section.

(2) *Time and manner of notification*. Notification is made by attaching a statement to the taxpayer's federal income tax return for the taxable year in which any of the reportable items in paragraphs (e)(2)(i) through (iii) of this section occur. The statement must contain the taxpayer's name, address, employer identification number, taxable year and the following information with respect to contributions of property other than water or sewerage disposal facilities that are subject to the expenditure rule described in paragraph (c) of this section:

(i) The amount of contributions in aid of construction expended during the taxable year for property described in section 118(c)(2)(A) (qualified property) as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(ii) The amount of contributions in aid

of construction that the taxpayer does not intend to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(iii) The amount of contributions in aid of construction that the taxpayer failed to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(f) *Effective date*. This section is applicable for any money or other property received by a regulated public utility that provides water or sewerage disposal services on or after the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on December 17, 1999, 8:45 a.m., and published in the issue of the Federal Register for December 20, 1999, 64 F.R. 71082)

Announcement and Request for Comments on Certain Plans of State and Local Government Employers under Section 457

Announcement 2000-1

Purpose

The Internal Revenue Service (IRS) is considering the proper treatment of amounts under certain plans of state and local governments. This announcement provides interim information about the reporting requirements that apply to these plans. The information contained in this announcement will apply until further guidance is issued by the Service.

Background

Section 457 plans are nonqualified deferred compensation plans established by state and local government and tax-exempt employers. Under section 457(e)(11) of the Internal Revenue Code, certain bona fide sick, vacation, compensatory time, severance pay, disability pay or death benefit plans are treated as not providing for the deferral of compensation and are therefore excluded from section 457.

If a plan is not a bona fide plan described in section 457(e)(11), the proper reporting of amounts under the plan generally depends on whether the plan is an eligible plan that meets the requirements of section 457(b) or an ineligible section 457(f) plan that does not meet these requirements. In order to be an eligible plan under section 457(b), the plan must meet a number of requirements, including the requirement that the amounts deferred for each year must generally not exceed the lesser of \$8000 (for 1999) or 33 1/3 percent of compensation and must be subject to restrictions on the time of distribution.

Under section 457(a), compensation deferred under an eligible plan, and the income attributable to that deferred compensation, is not includible in gross income until the taxable year in which the amounts are actually paid or made available to the plan participant or other beneficiary. Similarly, if a plan is a bona fide severance pay plan described in section 457(e)(11), amounts under the plan are generally not includible in gross income until paid or made available. In contrast, amounts under a plan described in section 457(f) are included in the participant or beneficiary's gross income for the first taxable year in which there is no substantial risk of forfeiture of the rights to the compensation.

Timing of reporting of payments under certain plans

Under this interim guidance by the Service, state and local governments should not report amounts, on either a Form 1099 or a Form W-2, for any year prior to the year in which the participant or beneficiary is in actual or constructive receipt of these amounts, if the amounts are provided under the following type of plan:

- The plan was in existence on December 22, 1999.
- The plan is a broad-based plan maintained by a state or local government employer primarily for non-highly compensated employees.
- The plan is nonelective. That is, the plan must not provide the participant with a choice between current and future compensation.
- The plan has been treated by the state or local government as a bona fide severance pay plan under section 457(e)(11) for those years before calendar year 1999 in which the plan was in existence.

• The plan satisfies the following three requirements:

- a. Payments under the plan are designed to provide supplemental income for a transitional period, rather than to provide retirement income.
- b. Payments under the plan are made only after separation from service with the employer, including retirement.
- c. Payments are completed within a short period of time, not to exceed 5 years, after separation from service.

Solely for purposes of this announcement, a plan that provides severance pay benefits as described in §31.3121(v)(2)-1(b)(4)(iv)(B) of the Regulations will be treated as satisfying (a), (b) and (c) above.

REQUEST FOR PUBLIC COMMENT

The Service and the Treasury Department understand that, in the absence of formal guidance, many state and local governments maintain plans with the above characteristics under the belief that these plans are "bona fide severance pay plans" within the meaning of section 457(e)(11), and accordingly would not be subject to the income inclusion provisions applicable to ineligible section 457(f) plans. The Service and the Treasury Department are now considering guidance under section 457 with respect to certain plans of state and local government and tax-exempt employers and are requesting comments on what types of plans maintained by state and local government and tax exempt employers are properly considered bona fide severance pay plans for purposes of section 457. Send written comments to: Internal Revenue Service, Attn: CC:DOM:CORP:R (Section 457 Plans), Room 5201, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Written comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Internal Revenue Service, Courier's Desk, Attn: CC:DOM:CORP:R (Section 457 Plans), 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Alternatively, written comments may be submitted electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at: http://www.irs.gov/tax_regs/regslst.html.

Comments should be received by February 20, 2000.

FOR FURTHER INFORMATION

CONTACT: Cheryl Press of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-4606 (not a toll-free number).

Internal Revenue Service to Make Information Letters Available for Public Inspection

Announcement 2000-2

The Internal Revenue Service will make information letters written by the National Office of Chief Counsel and the Commissioner, Tax Exempt and Government Entities Division, to members of the public in response to inquiries postmarked or, if not mailed, received after January 1, 2000, available for public inspection quarterly beginning March 31, 2000, and on a continuing quarterly basis. These documents provide general statements of well-defined law without applying them to a specific set of facts. Before any information letter is made available for public inspection, the Service will delete any name, address, and other identifying information as appropriate under the Freedom of Information Act (FOIA) (for example, FOIA personal privacy exemption of 5 U.S.C. § 552(b)(6) and tax details exempt pursuant to I.R.C. § 6103, as incorporated into FOIA by 5 U.S.C. § 552(b)(3)). This approach appropriately balances various privacy interests and the public's interest in understanding the internal revenue laws. Because information letters do not constitute written determinations (including Chief Counsel Advice) as defined in I.R.C. § 6110, these documents are not subject to disclosure under § 6110.

Information letters are advisory only and have no binding effect on the Service.

Information letters will be found in the Freedom of Information Room, 1111 Constitution Ave., N.W., Washington, DC 20224, where they may be read and copied by the public during the hours 9:00 a.m. to 4:00 p.m., and posted to the Service Website at www.irs.gov/prod/news/efoia.

The principal author of this announcement is Andrea Tucker of the Office of the Associate Chief Counsel (Domestic). For further information regarding this announcement contact Andrea Tucker on (202) 622-4940 (not a toll-free call).